

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
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U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade

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This issue contains:
U.S. Customs Service
T.D. 98-88
General Notices

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 98-88)

IMPLEMENTATION OF THE AUTOMATED DRAWBACK SELECTIVITY PROGRAM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 622 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, this document provides notice of the nationwide operational implementation of an automated drawback selectivity program. Publication of this notice is a prerequisite to application of the section 622 provisions that provide for the imposition of monetary penalties for filing false drawback claims and that provide for the establishment of a drawback compliance program.

DATES: The automated drawback selectivity program was implemented on August 29, 1998. The liability for monetary penalties for the filing of false drawback claims applies to drawback claims filed on and after November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Al Morawski, Office of Field Operations (202-927-1082).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Modernization provisions contained in Title VI of the North American Free Trade Agreement Implementation Act (the Act, Public Law 103-182, 107 Stat. 2057) included, in section 622, provisions regarding penalties for false drawback claims.

Paragraph (a) of section 622 amended the Tariff Act of 1930 by adding section 593A (codified at 19 U.S.C. 1593a) which (1) prescribes the actions that Customs may take, including the assessment of monetary penalties, for the filing of a false (fraudulent or negligent) drawback claim, (2) requires Customs to establish a voluntary drawback compliance program under which participants in certain circumstances

may be afforded an alternative to the monetary penalty that would normally apply for filing a false drawback claim, and (3) requires the Secretary of the Treasury to promulgate regulations and guidelines to implement the section 593A provisions.

Under paragraph (b) of section 622, which concerns the effective date of the amendment made by paragraph (a), the section 593A provisions can apply only to drawback claims filed on and after the nationwide operational implementation of an automated drawback selectivity program by Customs. Customs is required under paragraph (b) of section 622 to publish in the Customs Bulletin the effective date of the selectivity program.

Drawback Compliance Program

On March 5, 1998, Customs published in the Federal Register (63 FR 10970) as T.D. 98-16 a final rule document which revised the provisions within the Customs Regulations that pertain to drawback. The bulk of those drawback regulatory changes involved a revision of Part 191 of the Customs Regulations (19 CFR Part 191) in order to, among other things, reflect extensive changes to the drawback law made by section 632 of the Act. The Part 191 texts as so revised also include a Subpart S, §§ 191.191 through 191.195, which pertains to the drawback compliance program mandated by section 593A of the Tariff Act of 1930 as added by section 622 of the Act. Those Subpart S provisions are directed to procedural aspects of the drawback compliance program (such as program participation requirements, including application submission and approval standards) and therefore do not incorporate specific standards for the assessment or mitigation of penalties against program participants for filing false drawback claims. In view of the effective date limitation in paragraph (b) of section 622 of the Act, Customs has to date not accepted applications from prospective program participants or in any other way put those Subpart S provisions into operation.

Penalties and Mitigation Guidelines For False Drawback Claims

On September 29, 1998, Customs published in the Federal Register (63 FR 51868) a notice of proposed rulemaking which set forth proposed amendments to the Customs Regulations to set forth the procedures to be followed when false drawback claims are filed and penalties are thereby incurred. The proposed regulatory changes implement all penalty aspects of section 622 of the Act and thus include proposed mitigation guidelines that Customs would follow in arriving at a just and reasonable assessment and disposition of liabilities when false drawback claims are filed and penalties are incurred by drawback compliance program participants or by persons who are not participants in that program. The document also proposed an amendment to the regulatory texts adopted by T.D. 98-16 to provide more specificity regarding the grounds and procedures for removal of a participant from the drawback compliance program. The Background portion of the document also referred to paragraph (b) of section 622 of the Act, noting in this

regard that the proposed regulatory amendments set forth in the document, if adopted as a final rule, will not be effective until Customs implements an automated drawback selectivity program.

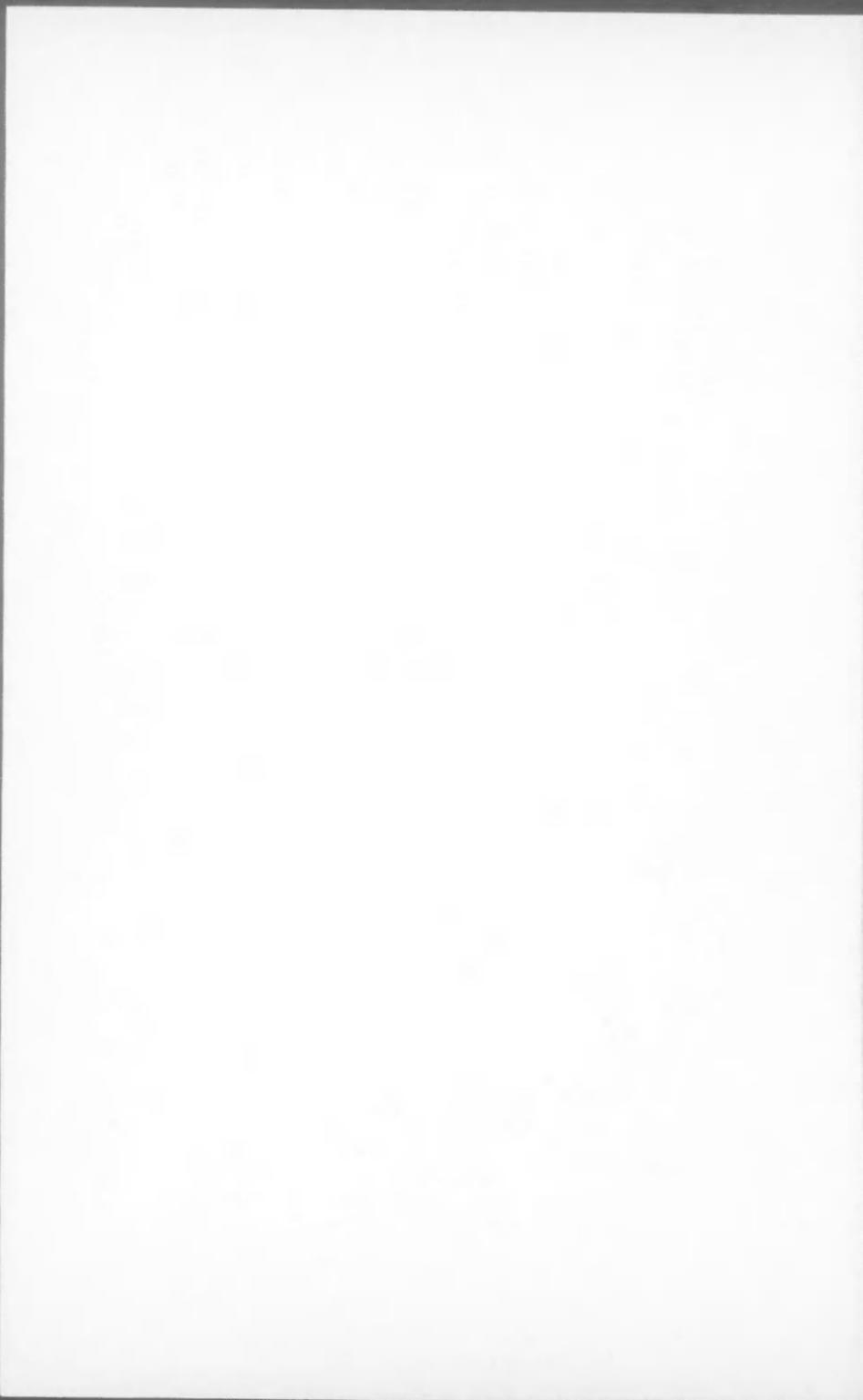
IMPLEMENTATION OF THE SELECTIVITY PROGRAM

Customs hereby gives notice that on August 29, 1998, Customs implemented, on a nationwide operational basis, an automated drawback selectivity program. This criteria-based selectivity program automates the previously manual, labor-intensive processing of drawback claims. This automation will result in more efficient processing of drawback data and will move Customs one step closer to paperless processing of drawback claims.

As a consequence of implementation of the drawback selectivity program, any person who files a false drawback claim on and after November 25, 1998, will become potentially liable for a monetary penalty under 19 U.S.C. 1593a. However, Customs does not intend to issue a penalty notice or take any other action authorized by 19 U.S.C. 1593a in respect of any such violation until such time as final regulations implementing the provisions of 19 U.S.C. 1593a are in effect.

Dated: November 4, 1998.

ROBERT S. TROTTER,
Assistant Commissioner,
Office of Field Operations.



U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 10, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS RELATING TO TARIFF CLASSIFICATION OF CERTAIN PEANUT PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification or revocation of tariff classification ruling letters.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify A89415, issued February 14, 1997, and revoke NY A86915, issued September 11, 1996, A87658, issued October 31, 1996, A87802, issued November 1, 1996, A87890, issued November 1, 1996, A88071, issued October 8, 1996, A89417, issued February 14, 1997 and B81969, issued February 21, 1997, concerning the classification of certain peanut products under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before December 28, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to and may be inspected at the U.S. Customs Service, Office of

Regulations and Rulings, Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, Office of Regulations and Rulings: 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify and revoke several rulings pertaining to the tariff classification of certain peanut products.

Between September 1996 and February 1997, Customs issued a series of tariff classification rulings on several human food ingredients made from or based on peanuts. The principal ingredient in all the products was a "peanut flour" which was obtained by grinding the cake residue which resulted from the partial extraction of oil from roasted peanuts. Some of the resulting products were in granular form. Others were in a paste. In the rulings issued, the products were classified in either sub-heading 1901.90, HTSUS, which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other; or in sub-heading 2106.90, HTSUS, as food preparations not elsewhere specified or included * * * other * * * other * * * other. Customs has reviewed the facts in these cases and now believes the rulings are incorrect.

Customs intends to modify or revoke New York Ruling Letters (NYRL) A86915, A87658, A87802, A87890, A88071, A89415, A89417, B81969 (Attachments A-H to this document) to reflect the proper classification of the peanut products as either peanut butter and paste or other peanut products. Proposed HQ 961150 (Attachment I) discusses the review and modification or revocation of the New York Rulings. Before taking this action, consideration will be given to any written comments timely received.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 4, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.

U.S. CUSTOMS SERVICE,

New York, NY, September 11, 1996.

CLA-2-19:RR:NC:FC:228 A86915

Category: Classification

Tariff No. 1901.90.5600 and 1901.90.5800

MR. JOHN DICKERSON
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of a peanut-flavored filling mix from Canada.

DEAR MR. DICKERSON:

In your letter dated August 29, 1996 you requested a tariff classification ruling.

A sample, submitted with your letter, was examined and disposed of. "PB Flavored Filling Mix" is a soft, brown, oily product, with a strong aroma of peanuts. It is said to be composed of 62.9 percent peanut flour (with an oil content of 36 percent), 22.1 percent vegetable oil, and 15 percent sucrose. The peanut flour component is prepared from roasted peanuts that have had some of the oil removed by pressing, and the resulting cake ground into a fine powder. The PB Flavored Filling Mix will be imported in 50-pound boxes, 300-pound drums, or 2000-pound bulk bags, and used as an ingredient in the production of confections, baked goods, crackers, fillings, and reduced fat peanut butter.

The applicable subheading for this product, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1901.90.5600, Harmonized Tariff Schedules of the United States (HTS), which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 * * * described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1901.90.5800, HTS, and dutiable at the rate of 25.6 cents per kilogram, plus 9.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-466-5760.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, October 31, 1996.

CLA-2-21:RR:NC:FC:228 A87658
Category: Classification
Tariff No. 2106.90.9500 and 2106.90.9700

MR. JOHN DICKERSON
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of food ingredient from Canada.

DEAR MR. DICKERSON:

In your letter dated August 9, 1996, which was received by this office on September 17, 1996, you requested a tariff classification ruling.

The sample, accompanying your letter, was forwarded to the U.S. Customs laboratory for analysis. "Sweetened P Flour" is a light brown powder said to be composed of 90.1 percent "peanut flour" and 9.9 percent cane sugar. Laboratory analysis however, found the sample to contain 16 percent sugar. The peanut flour with an oil content of about 36 percent, was prepared by grinding the cake residue resulting from the partial extraction of oil from roasted peanuts. Thee Sweetened P Flour will be imported in 50-pound boxes, 300-pound drums, or 2000-pound bulk bags, and used as an ingredient in the production of confections, baked goods, crackers, fillings, and reduced fat peanut butter.

The applicable subheading for the Sweetened P Flour, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2106.90.9500, HTS, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 * * * described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 2106.90.9700, HTS, and dutiable at the rate of 32.2 cents per kilogram plus 9.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-466-5760.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.

U.S. CUSTOMS SERVICE.

New York, NY, November 1, 1996.

CLA-2-21:RR:NC:FC:228 A87802

Category: Classification

Tariff No. 2106.90.9500 and 2106.90.9700

MR. JOHN DICKERSON
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of a food ingredient from Canada.

DEAR MR. DICKERSON:

In your letter dated August 9, 1996, which was received by this office on September 17, 1996, you requested a tariff classification ruling.

The sample, accompanying your letter, was forwarded to the U.S. Customs laboratory for analysis. "P Bakery Mix" is a light brown powder said to be composed of 40 percent "peanut flour" and 60 percent cane sugar. Laboratory analysis found the sample contained 59.4 percent sugar, and 88.3 percent of the material capable of passing through a sieve with an aperture of 1.25 mm. The peanut flour ingredient, with an oil content of about 36 percent, was prepared by grinding the cake residue resulting from the partial extraction of oil from roasted peanuts. P Bakery Mix will be imported in 50-pound boxes, 300-pound drums, or 2000-pound bulk bags, and used as an ingredient in the production of confections, baked goods, crackers, fillings, and reduced fat peanut butter.

The applicable subheading for the P Bakery Mix, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2106.90.9500, HTS, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 * * * described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 2106.90.9700, HTS, and dutiable at the rate of 32.2 cents per kilogram plus 9.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-466-5760.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, November 1, 1996.
CLA-2-21-RR:NC:FC:228 A87890
Category: Classification
Tariff No. 2106.90.9500 and 2106.90.9700

MR. JOHN DICKERSON
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of a food ingredient from Canada.

DEAR MR. DICKERSON:

In your letter dated August 9, 1996, which was received by this office on September 17, 1996, you requested a tariff classification ruling.

The sample, accompanying your letter, was forwarded to the U.S. Customs laboratory for analysis. "Imitation PB Filling Mix 1" is a light brown paste said to be composed of 67.9 percent "peanut flour", 9 percent cane sugar, approximately 12.1 percent oil from rapeseed, soybean, corn, cottonseed, and/or peanut, and 6 percent partially hydrogenated fat from sunflower, palm, cottonseed or soybean oil. Laboratory analysis however, found the sample to contain 23.7 percent sugar. The peanut flour ingredient, with an oil content of about 36 percent, was prepared by grinding the cake residue resulting from the partial extraction of oil from roasted peanuts. The product will be imported in 50-pound boxes, 300-pound drums, or 2000-pound bulk bags, and used as an ingredient in the production of confections, baked goods, crackers, fillings, and reduced fat peanut butter.

The applicable subheading for the Imitation PB Filling Mix 1, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2106.90.9500, HTS, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 * * * described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 2106.90.9700, HTS, and dutiable at the rate of 32.2 cents per kilogram plus 9.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-466-5760.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

New York, NY, October 8, 1996.

CLA-2-19:RR:NC:FC:228 A88071

Category: Classification

Tariff No. 1901.90.9095

MR. JOHN DICKERSON
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of a food product from Canada.

DEAR MR. DICKERSON:

In your letter dated September 16, 1996 you requested a tariff classification ruling. A sample accompanied your letter, was examined and disposed of. "Imitation PB Filling Mix 2" is a soft, creamy, brown paste, said to be composed of 67.9 percent "peanut flour," 9 percent dextrose, and approximately 18 percent vegetable oil. The peanut flour ingredient has an oil content of approximately 36 percent, and was prepared by grinding the cake resulting from the partial extraction of oil from roasted peanuts. Imitation PB Filling Mix 2 will be imported in 50-pound bags, 300-pound drums, or 2000-pound bulk bags, and used as an ingredient in the production of dairy products, confections, baked goods, crackers, fillings and reduced fat peanut butter.

The applicable tariff provision for the Imitation PB Filling Mix 2 will be 1901.90.9095, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other. The general rate of duty will be 8.8 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopارد at 212-466-5760.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

New York, NY, February 14, 1997.

CLA-2-19:RR:NC:2:228 A89415

Category: Classification

Tariff No. 1901.90.9095 and 2106.90.9998

MR. JOHN DICKERSON
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of food ingredients from Canada.

DEAR MR. DICKERSON:

In your letter dated November 1, 1996 you requested a tariff classification ruling.

Samples, submitted with your letter, were forwarded to the U.S. Customs laboratory for analysis. Additional information regarding the manufacturing process was submitted on February 5, 1997. "Sweetened P Flour II" is a light-brown, granular product, said to be

composed of 92 percent "peanut flour" and 8 percent cane or beet sugar. The peanut flour ingredient is a product made by grinding the residue remaining after the partial extraction of oil from roasted peanuts. Laboratory analysis found over 95 percent of the sample capable of passing through a wire sieve with a 1.25 millimeter aperture. "Coarse Peanut Flour 36" is a light-brown granular material prepared by grinding the residue from the partial extraction of oil from roasted peanuts. Laboratory analysis of this sample found 81.8 percent capable of passing through the 1.25 millimeter aperture. Both products will be imported in 50-pound boxes, 300-pound drums, or 2000-pound bulk bags, and used as ingredients in the manufacture of dairy products, confections, baked goods, and reduced-fat peanut butter.

The applicable tariff provision for the Sweetened P Flour II will be 1901.90.9095, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other. The general rate of duty will be 8.2 percent ad valorem.

The applicable subheading for the Coarse Peanut Flour 36 will be 2106.90.9998, HTSUSA, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * other. The general rate of duty will be 8.2 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-466-5760.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, February 14, 1997.

CLA-2-19:RR:NC:2:228 A89417
Category: Classification
Tariff No. 1901.90.9095

MR. JOHN DICKERSON
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of food ingredients from Canada.

DEAR MR. DICKERSON:

In your letter dated October 29, 1996 you requested a tariff classification ruling.

A sample, submitted with your letter, was forwarded to the U.S. Customs laboratory for analysis. "PB Filling IV" is a light-brown, granular product, said to be composed of 61.7 percent "peanut flour," 26.8 percent oil (rapeseed, soybean, corn, cottonseed, and/or peanut oil), 8 percent sucrose, 4 percent partially hydrogenated fat, and one percent salt. The peanut flour ingredient is a product made by grinding the residue remaining after the partial extraction of oil from roasted peanuts. PB Filling IV will be imported in 50-pound boxes, 300-pound drums, or 2000-pound bulk bags, and used as an ingredient in dairy products, confections, baked goods, and fillings.

The applicable tariff provision for this product will be 1901.90.9095, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other. The general rate of duty will be 8.2 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-466-5760.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
New York, NY, February 21, 1997.

CLA-2-19:RR:NC:2:228 B81969
Category: Classification
Tariff No. 1901.90.9095

MR. ROBERT KARPIUK
FUNDCO
3927 High Pines
Houston, TX 77068

Re: The tariff classification of food ingredients from Canada.

DEAR MR. KARPIUK:

In your letter dated February 5, 1997 you requested a tariff classification ruling.

A sample, submitted with your letter, was examined and disposed of. "Dextrin Filling Base" is a soft brown paste said to be composed of 69 percent "peanut flour 36," 20 percent vegetable oil, 7 percent maltodextrin or corn syrup solids, and 4 percent partially hydrogenated vegetable oil. The peanut flour ingredient is a product made by grinding the residue remaining after the partial extraction of oil from roasted peanuts. Dextrin Filling Base will be imported in 50-pound boxes, 500-pound drums, or 2000-pound bulk totes, and used as an ingredient in the manufacture of confections and reduced-fat peanut butter.

The applicable tariff provision for this product will be 1901.90.9095, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other. The general rate of duty will be 8.2 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 212-466-5760.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:GC 961150ptl
Category: Classification
Tariff No. 2008.11

MR. ROBERT J. KARPIUK
SELECT FOOD PROCESSING CORP.
2946 Walker Road
Windsor, Ontario N8W 3R3
Canada

Re: Various peanut products; modification or revocation of New York Ruling Letters (NYRL) A89415, A86915, A87658, A87802, A87890, A88071, A89417, and B81969; B88467; HQs 083352, 959816.

DEAR MR. KARPIUK:

This is in response to your letter of November 24, 1997, in which you asked Customs to clarify two ruling letters which had been issued to the Fundco Corporation. The two letters classified "Coarse Peanut Flour" in different headings of the Harmonized Tariff Schedule of the United States (HTSUS). Those rulings were A89415, issued on February 14, 1997, and B88467, issued on October 23, 1997.

In the process of reviewing the rulings you identified, Customs noticed that several other rulings had also been issued to the Fundco Corporation in which various peanut products which appear to be similar had been classified differently. In order to maintain a consistent classification system, Customs has reviewed these additional rulings and determined that several should be modified or revoked.

Facts:

NY A89415, issued on February 14, 1997, classified two products. The first, identified as "Sweetened P Flour II" was described as being a light-brown granular product composed of 92 percent "peanut flour" and 8 percent cane or beet sugar. The peanut flour ingredient is a product made by grinding the residue remaining after the partial extraction of oil from roasted peanuts. Laboratory analysis found over 95 percent of the sample was capable of passing through a wire sieve with a 1.25mm aperture. This "Sweetened P Flour II" was classified in subheading 1901.90.9095, HTSUS, which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other. The second product, called "Coarse Peanut Flour 36" was described as a light-brown granular material produced by grinding the residue from the partial extraction of oil from roasted peanuts. Laboratory analysis of this sample found 81.8 percent capable of passing through a 1.25mm wire sieve aperture. This product was classified in subheading 2106.90.9998, HTSUS, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * other.

NY B88467, issued on October 23, 1997, also concerned two products. The first, identified as "Sweetened Coarse Peanut Flour" contained 91.5 percent "Coarse Peanut Flour" and 8.5 percent sugar. Laboratory analysis found that 86.4 percent of this product passed through a 1.25mm wire sieve aperture. This product was classified in subheading 2008.11.4500, HTSUS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: other: described in additional U.S. note 2 to chapter 12 and entered pursuant to its provisions. The other product was the same "Coarse Peanut Flour 36" which had been classified in subheading 2106.90.9998, HTSUS, in NY A89415. However, in B88467, the product was classified in subheading 2008.11.4500, HTSUS.

Other rulings which have been issued to Fundco, and which address related products are as follows:

NY A86915, issued on September 11, 1996, classified "PB Flavored Filling Mix" which is a soft, brown oily product, composed of 62.9 percent "peanut flour" (with an oil content of 36 percent), 22.1 percent vegetable oil, and 15 percent sucrose, in subheading 1901.90.5600, HTSUS, which provides for food preparations of flour, meal, starch or malt

extract * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. After those limits are reached, the product would be classified in subheading 1910.90.5800, HTSUS.

NY A87658, issued October 31, 1996, classified "Sweetened P Flour," a light brown powder, said to be composed of 90.1 percent "peanut flour" (which had an oil content of about 36 percent) and 9.9 percent cane sugar (the Customs laboratory found a sample to contain 16 percent sugar) in subheading 2106.90.9500, HTSUS, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 * * * described in additional U.S. note 8 to chapter 17 and entered subject to its provisions. After those limits are reached, the product would be classified in subheading 2106.90.9700, HTSUS.

NY A87802, issued November 1, 1996, classified "P Bakery Mix," a light brown powder composed of 40 percent "peanut flour" (which had an oil content of 36 percent) and 60 percent cane sugar in subheading 2106.90.9500, HTSUS, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 and entered subject to its provisions. After those limits are reached, the product would be classified in subheading 2106.90.9700, HTSUS.

NY A87890, issued November 1, 1996, classified "Imitation PB Filling Mix 1," a light brown paste said to be composed of 67.9 percent "peanut flour" (which has a 36 percent oil content), 9 percent cane sugar (the Customs Laboratory found a sample to contain 23.7 percent sugar), approximately 12.1 percent oil from rapeseed, soybean, corn, cottonseed, and/or peanut, and 6 percent partially hydrogenated fat from sunflower, palm, cottonseed or soybean oil, in subheading 2106.90.9500, HTSUS, which provides for food preparations not elsewhere specified or included * * * other * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar when imported within limits described in additional U.S. note 3 to chapter 17 and entered subject to its provisions. After those limits are reached, the product would be classified in subheading 2106.90.9700, HTSUS.

NY A88071, issued October 8, 1996, classified "Imitation PB Filling Mix 2," a soft, creamy brown paste composed of 67.9 percent "peanut flour" (which has a 36 oil content), 9 percent dextrose, and approximately 18 percent vegetable oil, in subheading 1901.90.9095, HTSUS, which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other.

NY A89417, issued February 14, 1997, classified "PB Filling IV," a soft brown paste composed of 61.7 percent "peanut flour," 26.8 percent rapeseed, soybean, corn, cottonseed and/or peanut oil, 8 percent sucrose, 4 percent partially hydrogenated fat, and 1 percent salt, in subheading 1901.90.9095, HTSUS, which provides for food preparations of flour, meal, starch, or malt extract * * * other * * * other * * * other.

NY B81969, issued February 21, 1997, classified "Dextrin Filling Base," a soft brown paste composed of 69 percent "peanut flour 36," 20 percent vegetable oil, 7 percent maltodextrin or corn syrup solids, and 4 percent partially hydrogenated vegetable oil, in subheading 1901.90.9095, HTSUS, which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other.

The source of the peanut component of all the products classified in the rulings cited above was the residue which remained after a portion of the naturally occurring oil had been removed from the roasted peanuts.

Issue:

What is the classification of these peanut-based products?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The headings under consideration are as follows:

1901	Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
1901.90	Other: Other: * * * * * * * *
	Other: Other: * * * * * * * *
	Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
1901.90.5600	Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions.
1901.90.5800	Other. * * * * * * * *
1901.90.9000	Other. * * * * * * * *
1901.90.9095	Other.
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: Peanuts (ground-nuts): Peanut butter and paste: * * * * * * * *
2008.11.0500	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.
2008.11.1500	Other * * * * * * * *
	Other: * * * * * * * *
2008.11.4500	Described in additional U.S. note 2 to chapter 12 and entered pursuant to its provisions.
2008.11.6000	Other.
2106	Food preparations not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions.
2106.90	Other: Other: Other: Other: Other: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions.
2106.90.9500	Other.
2106.90.9700	In the rulings under review, the products being classified were mixtures which had, as their distinguishing ingredient, either a peanut flour or a peanut paste. The source of the peanut ingredient was a cake residue which was the result of the partial extraction of oil from roasted peanuts. This cake residue was then ground into a powder. The consistency

(powder or paste) of the actual product depended on other ingredients which had been added to the powder.

The peanut component of the products was determined to be a residue (a good of heading 2305, HTSUS). As a result of this initial determination, the product which resulted from further processing was classified as a processed residue, rather than a processed peanut. Because they were a product of vegetable origin intended for human consumption, samples were submitted to the Customs laboratories for particle size analysis to determine whether the product qualified for consideration as a "meal" of heading 1901. In HQ 083352, dated October 17, 1989, Customs stated that "since Chapter 19 does not set specific standards of what constitutes flour or meal, Customs has adopted the standards of Chapter 11, HTSUS." Note 3 of Chapter 11, sets forth the particle size parameters for meal (other than corn) as a product that "at least 95 percent by weight passes through a woven metal wire cloth sieve with an aperture of 1.25 mm." If the material passed through the sieve, then the product would be considered a "meal" for tariff classification purposes, and it or the product made from it, would be classified as a food preparation of a meal in heading 1901, HTSUS. If the product did not pass through the sieve and was not eligible for classification as a meal, it was then classified in heading 2106, HTSUS, the tariff provision for food preparations not elsewhere specified or included.

We have determined that the base component of the products is not an actual "residue" in the understanding of the peanut industry. When oil has been extracted from peanuts, the residue (or press cake) from the recovery typically has an oil content of between 7 and 1 percent depending on the method of oil recovery used (see, *Peanuts: Production, Processing, Products*, by Jasper G. Woodroof, The Avi Publishing Co, Inc. (1973)). The material we are considering has an oil content of approximately 36 percent. Thus, we are not considering a residue of heading 2305, HTSUS, but a partially processed peanut product in the form of either a paste or a powder.

The partial extraction of oil from the roasted peanuts and the addition of other ingredients may exclude the product from the standard of identity definition of peanut butter used by the U.S. Food and Drug Administration (FDA) in 21 CFR 164.150. However, such processing does not alter the fact that the article is still basically a peanut product for tariff purposes. This identity-retention is also recognized by the FDA which has provided for products which do not conform to the strict standard of identity requirements for peanut butter by creating a provision (21 CFR 102.23) for peanut spreads which may contain varying percentages of peanut product.

In HQ 959816, issued February 25, 1997, while ruling that peanut butter spread was properly classified in subheading 2008.11, HTSUS, which provides for "Peanuts (ground-nuts): peanut butter and paste," Customs noted that the subheading was an *ex nomine* provision which includes all forms of the article. Accordingly, we hold that NY A86915, A87890, A88071, A89417 and B81969 which classified products properly described as "peanut paste" in subheading 1901, HTSUS, should be revoked. These products should be classified in subheading 2008.11, HTSUS.

The peanut products described as "Sweetened P Flour" in NY A87658, "P Bakery Mix" in A87802, and the "Coarse Peanut Flour" in A89415, are not eligible for classification as "meal" in spite of their granular composition because they do not meet the standards of Note 3, Chapter 11, HTSUS, (see above). Accordingly, these products should be classified in subheading 2008.11, HTSUS.

Insofar as the "Sweetened P Flour II" of NY A89415 is concerned, this article is eligible for classification as "meal" because it meets the test in Note 3, Chapter 11, HTSUS, (see above). In HQ 953322, dated April 21, 1993, Customs stated that products which are of vegetable origin and which are not excluded by Note 2 of Chapter 19, may be considered for classification as a "meal". The "Sweetened P Flour II" is a product of vegetable origin, intended for human consumption, which meets the test of Note 3, Chapter 11. It also does not fall within the exceptions of Note 2(b) of Chapter 19. Accordingly, we conclude it was properly classified in subheading 1901.90.9095, HTSUS, which provides for food preparations of flour, meal, starch or malt extract * * * other * * * other * * * other.

Accordingly, we are revoking the following NY Rulings:

NY A86915 which classified "PB Flavored Filling Mix", NY A 87658, which classified "Sweetened P Flour", NY A87802, which classified "P Bakery Mix", NY A87890 which classified "Imitation PB Filling Mix 1", NY A88071 which classified "Imitation PB Filling Mix 2", NY A89417, which classified "PB Filling IV" and NY B81969, which classified "Dextrin Filling Base".

We are modifying NY A89415 insofar as the classification of "Coarse Peanut Flour 36" is concerned.

Holding:

The product identified as "PB Flavored Filling Mix" is classified in subheading 2008.11.0500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 5 to chapter 20. If the quantitative limits of additional U.S. note 5 to chapter 20 have been reached, the product will be classified in subheading 2008.11.1500, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

The product identified as "Sweetened P Flour" is classified in subheading 2008.11.4500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 2 to chapter 12. If the quantitative limits of additional U.S. note 2 to chapter 12 have been reached, the product will be classified in subheading 2008.11.6000, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

The product identified as "P Bakery Mix" is classified in subheading 2008.11.4500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 2 to chapter 12. If the quantitative limits of additional U.S. note 2 to chapter 12 have been reached, the product will be classified in subheading 2008.11.6000, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

The product identified as "Imitation PB Filling Mix 1" is classified in subheading 2008.11.0500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 5 to chapter 20. If the quantitative limits of additional U.S. note 5 to chapter 20 have been reached, the product will be classified in subheading 2008.11.1500, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

The product identified as "Imitation PB Filling Mix 2" is classified in subheading 2008.11.0500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 5 to chapter 20. If the quantitative limits of additional U.S. note 5 to chapter 20 have been reached, the product will be classified in subheading 2008.11.1500, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

The product identified as "Coarse Peanut Flour 36" is classified in subheading 2008.11.4500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 2 to chapter 12. If the quantitative limits of additional U.S. note 2 to chapter 12 have been reached, the product will be classified in subheading 2008.11.6000, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

The product identified as "PB Filling IV" is classified in subheading 2008.11.0500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 5 to chapter 20. If the quantitative limits of additional U.S. note 5 to chapter 20 have been reached, the product will be classified in subheading 2008.11.1500, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

The product identified as "Dextrin Filling Base" is classified in subheading 2008.11.0500, HTSUS, if imported within quantities that fall within the limits described in additional U.S. note 5 to chapter 20. If the quantitative limits of additional U.S. note 5 to chapter 20 have been reached, the product will be classified in subheading 2008.11.1500, HTSUS, and dutiable at the 1998 general rate of 139.5 percent *ad valorem*.

NY A86915, A87658, A87802, A87890, A88071, A89417, and B81969 are revoked.

NY A89415 is modified.

NY B88467 is affirmed.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF CUSTOMS RULING LETTER RELATING TO THE CLASSIFICATION OF KNOTTED NET BALL BAGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter concerning the tariff classification of a net ball bag.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of net ball bags. Notice of the proposed revocation was published in the September 30, 1998, CUSTOMS BULLETIN.

EFFECTIVE DATE: Merchandise entered, or withdrawn from warehouse, for consumption on or after January 25, 1999.

FOR FURTHER INFORMATION: Phil Robins, Textile Branch, Office of Regulations and Rulings, 202-927-1031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 30, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 32, Number 39, proposing to revoke New York Ruling Letter (NY) C86007, dated April 15, 1998. That ruling classified a net ball bag under subheading 5609.00.3000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for articles of man-made fiber yarn, twine, cordage, rope or cables, not elsewhere specified or included. The net bag is shaped to hold a volley ball, or a ball of similar size. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking NY C86007 and classifying the net ball bags under the provision for other made up nets, in subheading 5608.19.2090, HTSUSA. Customs Headquarters Ruling Letter (HQ) 961983 revoking NY C86007 is set forth as an attachment to this document.

In accordance with 19 U.S.C. 1625(c)(1), HQ 961983 will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not

constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: November 6, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, November 6, 1998.
CLA-2 RR:CR:TE 961983 PR
Category: Classification
Tariff No 5608.19.2090

Ms. PAMELA PINTER
BIG APPLE CUSTOMS BROKERS, INC.
151-02 132nd Avenue
Jamaica, NY 11434

Re: Reconsideration of NY C86007; concerning the tariff classification of a net ball bag.

DEAR Ms. PINTER:

This is in reference to New York Ruling Letter (NY) C86007, which was issued by the Director, National Commodity Specialist Division, New York, New York, on April 15, 1998. The ruling classified a net ball bag under subheading 5609.00.3000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for articles of man-made fiber yarn, twine, cordage, rope or cables, not elsewhere specified or included. We have reviewed NY C86007 and have determined that the ruling is incorrect. Our decision on the matter follows.

Facts:

The article in issue is a knotted net bag of man-made fibers that is shaped to hold a volley ball, or a ball of similar size. A length of man-made fiber cord is threaded through the top of the net and then through a small spring operated plastic holder. The holder is used to adjust the cord when worn around a person's waist.

The provisions which merit consideration are highlighted below:

5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials: Of man-made textile materials:
5608.11.00	Made up fishing nets
5608.19	Other:
5608.19.10	Fish netting
5608.19.20	Other:
5608.19.2090	Other
*	*
5609.00	* * * twine cordage, rope or cables, not elsewhere specified or included:
5609.00.3000	Of man-made fibers

Issue:

The issue presented is whether the net ball bag is classifiable as an article of yarn or cordage, in subheading 5609.00.3000, HTSUSA, or as a made up net, in subheading 5608.19.2090, HTSUSA.

Law and Analysis:

The General Rules of Interpretation (GRIs), taken in their appropriate order, provide a framework for classification of merchandise under the HTSUSA. GRI 1 states that "classification shall be determined according to the terms of the headings and any relative section or chapter notes." In this case, heading 5608 provides for made up nets of textile materials, while heading 5609 provides for articles of yarn, twine, cordage, rope or cables not elsewhere specified or included.

Section XI, note 7, HTSUSA, states, in pertinent part:

7. For the purposes of this section, the expression "made up" means:

(a) Cut otherwise than into squares or rectangles;

* * * * *

(e) Assembled by sewing, gumming or otherwise.

Pursuant to note 7, the net ball bag is "made up" for the purposes of the tariff schedule. Therefore, heading 5608 specifically describes the net ball bag and heading 5609, by its very wording, is not applicable.

The Explanatory Notes to the Harmonized Commodity Description and Coding System (ENs), which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and the GRIs. The EN to 5608 support classification of the ball bags under heading 5608, HTSUSA, by indicating in subsection 2 that "made up nets are nets, whether or not ready for use, made directly to shape or assembled from pieces of netting." The subsection continues by stating that the presence of handles, rings, weights, floats, cords or other accessories does not affect the classification of goods of this group and that the heading includes "net shopping bags and similar carrying nets (e.g., for tennis balls or footballs)."

Holding:

NY C86007 is hereby revoked. The net ball bag is properly classified under heading 5608.19.2090, HTSUSA, which provides for other "made up fishing nets and other made up nets, of textile materials." The applicable rate of duty is 8 percent *ad valorem* and the textile category is 229.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Director.)

**PROPOSED REVOCATION OF RULING LETTER RELATING TO
TARIFF CLASSIFICATION OF A PLASTIC BLADDER AND
TEXTILE CARRIER**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a plastic bladder and a textile carrier. The merchandise consists of a sheath-like insulated carrier, a bladder and a hose with a silicone bite valve at one end. The article is designed to provide a user with "hands-free" access to a potable liquid during heavy physical exertion. Comments are invited with respect to the correctness of the proposed revocation.

DATE: Comments must be received on or before December 28, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to, and may be inspected at, the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textile Branch (202) 927-2302.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a plastic bladder and a textile carrier. Customs invites comments as to the correctness of the proposed revocation.

In New York Ruling Letter (NY) A84182, issued June 12, 1996 (set forth as "Attachment A" to this document), the merchandise at issue was classified in subheading 4202.92.9025 (now 4202.92.9026), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 670, which provides for "Trunks * * * holsters * * * backpacks * * * bottle cases * * * and similar containers * * *; Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, With outer surface of textile materials: Other: Of man-made fibers."

It is now Customs position that the essential character of the complete article is imparted by the plastics component and its ability to store and efficiently provide liquid nourishment, and that it is classified in subheading 3926.90.9880, HTSUSA, the provision for "Other articles of plastics * * *: Other: Other, Other."

Customs intends to revoke NY A84182, in order to classify the merchandise in subheading 3926.90.9880, HTSUSA. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters Ruling Letter (HQ) 961049, revoking NY A84182, is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 10, 1998.

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
New York, NY, June 12, 1996.
CLA-2-42:RR:NC:WA:341 A84182
Category: Classification
Tariff No. 4202.92.9025

MR. STEVEN B. ZISSEN
STEIN, SHOSTAK, SHOSTAK & O'HARA
515 South Figueroa Street
Los Angeles, CA 90071-3329

Re: The tariff classification of an insulated carrier with liquid Reservoir from Mexico.

DEAR MR. ZISSEN:

In your letter dated May 28, 1996, you requested a classification ruling. Your request is on behalf of FastTrack Systems, Inc.

A sample of an article identified as the "CamelBak ThermoBak" hydration system. It consists of a composite of an insulated carrying bag which is designed to be worn on the back and a bladder type liquid reservoir.

The carrying bag has an outer surface of man-made textile materials covering a neoprene rubber insulating inner lining. It is designed to be worn on the back by means of padded, adjustable straps. It is sized and shaped similar to a sheath.

The bladder, or liquid reservoir, is designed to be removable and replaceable. It is manufactured of polyvinyl chloride (pvc) plastics and is designed to permit the user to drink from it without the use of hands. The bladder is a more sophisticated variation of a sport drink bottle and is of a kind classified within chapter 39, Harmonized Tariff System of the United States, Annotated (HTSUSA).

The insulated carrying bag is of a kind similar to those of Heading 4202, HTSUSA. It is specially designed to provide the organization, storage, protection and portability necessary for the bladder insert and imparts the essential character to the whole.

The applicable subheading for the "CamelBak, ThermoBak" will be 4202.92.9025, Harmonized Tariff Schedule of the United States (HTS), which provides, in part, for other containers, other, with outer surface of textile materials, of man-made fibers. The duty rate will be 19.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212-466-5893.

ROGER J. SILVESTRI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:TE 961049 GGD
Category: Classification
Tariff No. 3926.90.9880

STEVEN B. ZISSEN, ESQUIRE
2475 Paseo De Las Americas, Suite D
San Diego, CA 92173

Re: Revocation of New York Ruling Letter (NY) A84182; "CamelBak Hydration System,"
Carrier and Bladder for Hands-Free Intake of Liquids; Composite Article; Headings
3926 and 4202.

DEAR MR. ZISSEN:

In New York Ruling Letter (NY) A84182, issued June 12, 1996, on behalf of FasTrak Systems, Inc., Customs classified an article identified as the "CamelBak ThermoBak" hydration system, consisting of a plastic bladder designed to contain and dispense liquids and an insulated carrier designed to be worn on the back, in subheading 4202.92.9025 (now 4202.92.9026), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 670, which provides for "Trunks * * * holsters * * * backpacks * * * bottle cases * * * and similar containers * * *. Other: With outer surface of sheeting of plastic or of textile materials: Other: With outer surface of textile materials: Other: Of man-made fibers." We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY A84182.

Facts:

The name of the article at issue—the "CamelBak ThermoBak"—has recently been changed to the "CamelBak Classic" hydration system. The sample consists of a sheath-like insulated carrier (composed of an outer surface of man-made textile materials covering a neoprene rubber inner layer) and a bladder and hose (composed of polyurethane plastics) with a silicone bite valve at one end. Together, these components are designed to provide "hands-free" hydration, i.e., access to a potable liquid while the user is engaged in a physical activity such as biking, hiking, climbing, etc.

The carrier component measures approximately 18 inches in height by 6 1/4 inches in width and features padded, adjustable, polypropylene textile shoulder and waist strap(s). The carrier is manufactured to conform to the size and shape of the bladder it is designed to carry within an open-top compartment which closes by means of a hook and loop fabric fastener. The flexible bladder, which is made from hypoallergenic, food-grade plastic, features a removable cap, and contains up to 70 fluid ounces (of water, a sports drink, or other liquid). The tube, which measures approximately 40 inches in length, is designed to extend from the bottom of the bladder, out the top of the carrier, to a point of attachment (to clothing) near the user's mouth. When biting down on the valve at the end of the tube, the user

may obtain fluid with minimal effort. The bladder collapses to the extent that fluid is removed.

Issue:

Whether the "CamelBak Classic Hydration System" is classified under heading 4202, HTSUSA, as a container used to organize, store, protect and carry various items; under heading 3923, HTSUSA, as a plastic article for the conveyance or packing of goods; or under heading 3926, HTSUSA, as an other article of plastics.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

The article essentially consists of two components which together provide a user with "hands free" access to liquids, but which, if imported separately, would be classifiable under separate headings, i.e., heading 4202 and one of the headings under chapter 39, HTSUSA. Since the component which contains and supplies the liquid is an article of plastics, we first look to chapter 39, HTSUSA, which covers "plastics and articles thereof." In pertinent part, note 2(i) to chapter 39, HTSUSA, states: "This chapter does not cover * * * trunks, suitcases, handbags or other containers of heading 4202." Thus, if the "CamelBak Classic Hydration System" is classifiable as a container similar to the exemplars of heading 4202, it is precluded from classification under any heading within chapter 39, HTSUSA.

Heading 4202, HTSUSA, provides, in part, for "Trunks * * * briefcases * * * camera cases * * * holsters and similar containers; traveling bags * * * backpacks * * * shopping bags * * * bottle cases * * * and similar containers. * * * The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. The EN to heading 4202 indicate that the expression "similar containers" in the first part of the heading includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc. EN (c) to heading 4202 indicates that the heading does not cover articles which, although they may have the character of containers, are not similar to those enumerated in the heading.

The classification of certain containers—portable, soft-sided, insulated cooler bags with outer surface of plastics—was examined by the Court of Appeals for the Federal Circuit (CAFC) in *SGI, Incorporated v. United States*, 122 F.3d 1468 (Fed. Cir. 1997). The CAFC focused on whether food or beverages were involved with the *ex nomine* exemplars set forth in the tariff provisions at issue and, without discussion of heading 4202 exemplars that organize, store, protect, and/or carry food or beverages, the CAFC held that the appropriate classification for the cooler bags was subheading 3924.10.50, HTSUSA, the provision for "Tableware, kitchenware, other household articles * * * of plastics: Tableware and kitchenware: Other." The Court stated that this classification "does encompass exemplars that are *eiusdem generis* with the coolers because their purpose is to contain food and beverages."

This office concluded that the CAFC's decision in *SGI* should be implemented. Instructions were issued to Customs field personnel on March 18, 1998 (and approved for dissemination to members of the importing community), by which the principles of the CAFC's decision were expressly extended to portable, hard or soft-sided, insulated coolers and similar insulated containers with outer surface of plastics **or** with outer surface of textile materials. The instructions also stated that the classification of bottle cases, insulated bottle bags, and similar containers (if designed to contain only one bottle or similar single unit of a beverage, regardless of the unit's capacity) was unaffected by *SGI*. A bottle case, as noted above, is an exemplar container of heading 4202 and, unlike the articles before the Court in *SGI*, is not designed to contain food or multiple beverages.

The "CamelBak Classic Hydration System" is not similar to the soft-sided, insulated cooler bags at issue in *SGI*, nor to other household articles of plastics classifiable under heading 3924. Standing alone, the carrier component is somewhat similar to a sheath in

the manner that its main compartment is form-fitted for the bladder. The fact that the carrier is designed to transport a plastic bladder filled with a single beverage also renders the carrier component somewhat similar to a bottle bag. Although the carrier component is worn on the back and bears some similarity to a container of heading 4202, the design, features, and use of the complete article are principally related to providing hydration during heavy physical exertion. Although the article may have the character of a container, it is not similar to those enumerated in heading 4202. The essential character of the complete article is imparted by the plastics component and its ability to store and efficiently provide liquid nourishment and/or refreshment.

To determine in which of the headings under chapter 39 the "CamelBak Classic Hydration System" is properly classified, we first look to heading 3923, HTSUSA, which covers "Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics." In Headquarters Ruling Letter (HQ) 954072, issued September 2, 1993, this office compared headings 3923 and 4202 and stated that heading 3923 "provides for goods of a commercial nature (i.e., containers for packing and shipping bulk or commercial goods), whereas heading 4202 provides for containers used to convey personal articles in general (i.e., articles belonging to a person)." Although subheading 3923.30.00, HTSUSA, provides for "Carboys, bottles, flasks and similar articles," we concluded in HQ 952264, issued November 25, 1992, that the bottles classified in that subheading "are bottles such as beverage bottles which are designed to be filled and sold to the ultimate consumer with a beverage therein. They are not containers to be filled by the end user." Since the "CamelBak Classic" bladder is intended to be filled and refilled only by the end user, the "CamelBak Classic Hydration System" is not classifiable under heading 3923.

Heading 3926, HTSUSA, covers "Other articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicate that the heading covers articles, not elsewhere specified or included, of plastics. In HQ 960399, issued February 26, 1998, this office classified a quart-sized plastic canteen fitted with an insulated textile cover and packaged for retail sale with an adjustable textile pistol belt. We noted that the article was designed to be worn by an individual primarily to hold and carry potable water and to be filled by the ultimate consumer as needed. As such, the canteen was found not to be designed for the conveyance or packing of bulk or commercial goods. We concluded that the canteen was the primary component of the kit and that the insulated cover and pistol belt served a secondary function. The article was classified under heading 3926, specifically in subheading 3926.90.9880. We likewise find that the "CamelBak Classic Hydration System" is classified in subheading 3926.90.9880, HTSUSA, the provision for "Other articles of plastics * * *: Other: Other, Other." The general column one duty rate is 5.3 percent ad valorem.

Holding:

The article described as a "CamelBak Classic" (previously identified as a "CamelBak ThermoBak") Hydration System is classified in subheading 3926.90.9880, HTSUSA, the provision for "Other articles of plastics * * *: Other: Other, Other." The general column one duty rate is 5.3 percent ad valorem.

NY A84182, issued June 12, 1996, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

**PROPOSED MODIFICATION OF RULING LETTER RELATING
TO TARIFF CLASSIFICATION OF AN EXPANDABLE FILE
ENVELOPE**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of an expandable file envelope. The merchandise consists of a durable, expandable envelope which is essentially composed of plastic sheeting and which measures approximately 15 inches in width by 10 inches in height by $\frac{1}{2}$ inch in depth (compressed and without contents). The envelope's front exterior has a flap with 2 metal grommets through which is looped an elastic cord designed to encircle the envelope and close the flap. The article's interior has 1 compartment whose gussets allow the envelope to expand to a depth of $5\frac{1}{2}$ inches. The accordion-like gussets are attached to the front and back of the envelope by reinforced, stitched seams. Comments are invited with respect to the correctness of the proposed modification.

DATE: Comments must be received on or before December 28, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to, and may be inspected at, the U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textile Branch (202) 927-2302.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of an expandable file envelope. Customs invites comments as to the correctness of the proposed modification.

In New York Ruling Letter (NY) B84986, dated June 4, 1997 (set forth as "Attachment A" to this document), one of the two articles at issue was described as a "portfolio" and was classified in subheading 4202.12.2035, Harmonized Tariff Schedule of the United States Anno-

tated (HTSUSA), the provision for "Trunks * * * attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics, Other: Attache cases, briefcases, and similar containers."

It is now Customs position that, although the article described above may have the character of a container, it is not similar to attache cases, briefcases, or other containers enumerated in heading 4202, HTSUSA. The expandable file envelope is principally designed and intended to store records and other papers for extended periods of time. As such, it is classified in subheading 3926.10.0000, HTSUSA, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Office or school supplies."

Customs intends to modify NY B84986, in order to classify the expandable file envelope in subheading 3926.10.0000, HTSUSA. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters Ruling Letter (HQ) 961021, modifying NY B84986, is set forth as "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: November 9, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, June 4, 1997.
CLA-2-39:RR:NC:2.221 B84986
Category: Classification
Tariff No. 3926.10.0000 and 4202.12.2035

MR. SCOTT CHIPPERFIELD
C.H. POWELL COMPANY
Eleven Hanover Square
New York, NY 10005

Re: The tariff classification of a portfolio and an expandable file from China.

DEAR MR. CHIPPERFIELD:

In your letter dated May 20, 1997, on behalf of All-State Legal Supply Co., you requested a tariff classification ruling.

Two samples were submitted with your ruling. They are both composed of plastic sheeting. You refer to both samples as "expandable files." However, the first sample is a portfolio, meant to be carried under the arm. This portfolio has a closable flap that is secured through the use of an elastic cord. The second sample is an expandable file designed to store documents.

The applicable subheading for the portfolio will be 4202.12.2035, Harmonized Tariff Schedule of the United States (HTS), which provides for attache cases, briefcases or similar containers with outer surface of plastics, other. The rate of duty will be 20 percent ad valorem.

The applicable subheading for the expandable file will be 3926.10.0000, HTS, which provides for other articles of plastics, office or school supplies. The rate of duty will be 5.3 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212-466-5580.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

Washington, DC.

CLA-2 RR:CR:TE 961021 GGD

Category: Classification

Tariff No. 3926.10.0000

BRETT IAN HARRIS, ESQUIRE
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN, LLP
245 Park Avenue, 33rd floor
New York, NY 10167-3397

Re: Modification of New York Ruling Letter (NY) B84986; other articles of plastics; office or school supplies; not attache case, briefcase, school satchel; Headings 3926, 4202.

DEAR MR. HARRIS:

In New York Ruling Letter (NY) B84986, issued June 4, 1997, on behalf of All-State International, Inc., Customs classified one of the two articles at issue in subheading 4202.12.2035, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Trunks * * * attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics, Other: Attache cases, briefcases, and similar containers." We have reviewed that ruling and have found it to be in error. Therefore, this ruling modifies NY B84986.

Facts:

The article at issue, described in NY B84986 as a "portfolio," is identified in advertising/marketing literature by stock number 39121 and as a "Case-Guard Polyfiber File Envelope." The article consists of an expandable envelope which is essentially composed of plastic sheeting and which measures approximately 15 inches in width by 10 inches in height by $\frac{1}{2}$ inch in depth (compressed and without contents). The envelope's front exterior has a flap with two metal grommets through which is looped an elastic cord designed to encircle the envelope and close the flap. The interior of the article consists of one compartment whose accordion-like gussets (attached to the front and back of the envelope by reinforced, stitched seams) allow the envelope to expand to a depth of $5\frac{1}{4}$ inches.

Issue:

Whether the article is classified in subheading 4202.12.2035, HTSUSA, the provision for attache cases, briefcases, school satchels, and similar containers; or in subheading 3926.10.0000, HTSUSA, the provision for other articles of plastics, office or school supplies.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined accord-

ing to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUSA, provides, in part, for attache cases, briefcases, and similar containers. The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. EN (c) to heading 4202 indicates that the heading does not cover articles which, although they may have the character of containers, are not similar to those enumerated in the heading, for example, book covers and reading jackets, file-covers, document-jackets *** and which are wholly or mainly covered with leather, sheeting of plastics, etc. Such articles fall in heading 4205 if made of (or covered with) leather or composition leather, and in other chapters if made of (or covered with) other materials.

Among other merchandise, chapter 39, HTSUSA, covers plastics and articles thereof. In pertinent part, note 2(ij) to chapter 39, HTSUSA, states that "[t]his chapter does not cover *** trunks, suitcases, handbags or other containers of heading 4202." Heading 3926, HTSUSA, covers "Other articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicate that the articles covered by the heading include protective bags, file-covers, document-jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

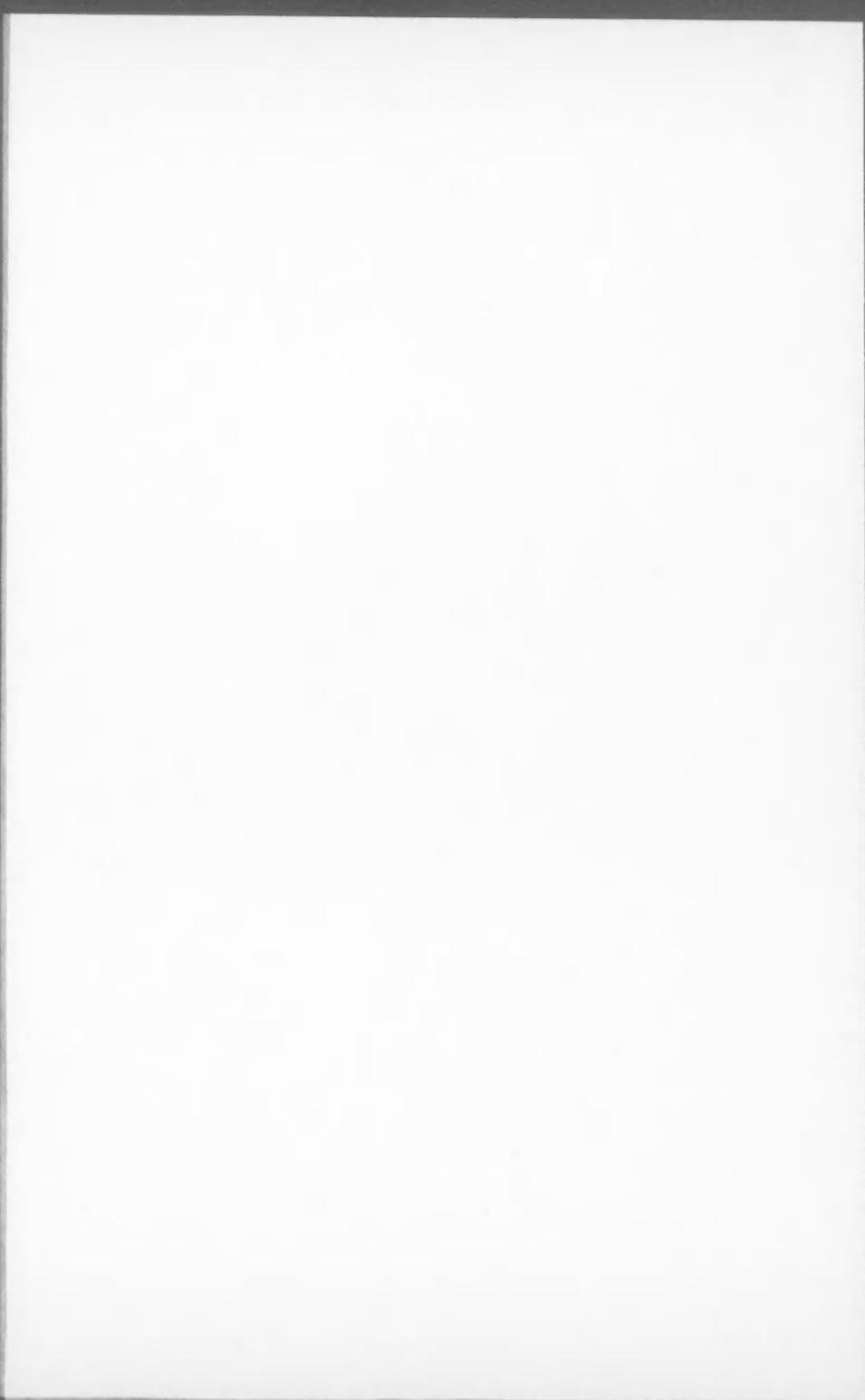
If the expandable file envelope is *prima facie* classifiable under heading 4202, HTSUSA, it may not be classified under heading 3926 or any other headings within chapter 39, HTSUSA. It must therefore be determined whether the article merely has the character of a heading 4202 container, or whether the article's purpose is to organize, store, protect, and carry various items. The expandable file envelope is primarily designed as a means to store records, documents, and/or other papers over an extended period of time. To effectively perform this task, the article has been constructed of durable plastic sheeting and a flap closure with an elastic loop to protect its contents. The file envelope's single gusseted compartment does not provide a significant organizational aspect, but its contents will most likely consist exclusively of papers and/or other flat items. The article is therefore not designed to contain the various items carried in a briefcase. Having no handle or carrying strap, the file envelope would be fairly heavy and difficult to carry if filled with papers to a point approaching its fully-expanded capacity. We find that, although the expandable file envelope has the character of a container, it is principally designed and intended to store and protect papers for extended periods of time. Its attributes are similar to those of file-covers and similar protective goods made by sewing together sheets of plastics and not to the containers of heading 4202. The article is classified in subheading 3926.10.0000, HTSUSA.

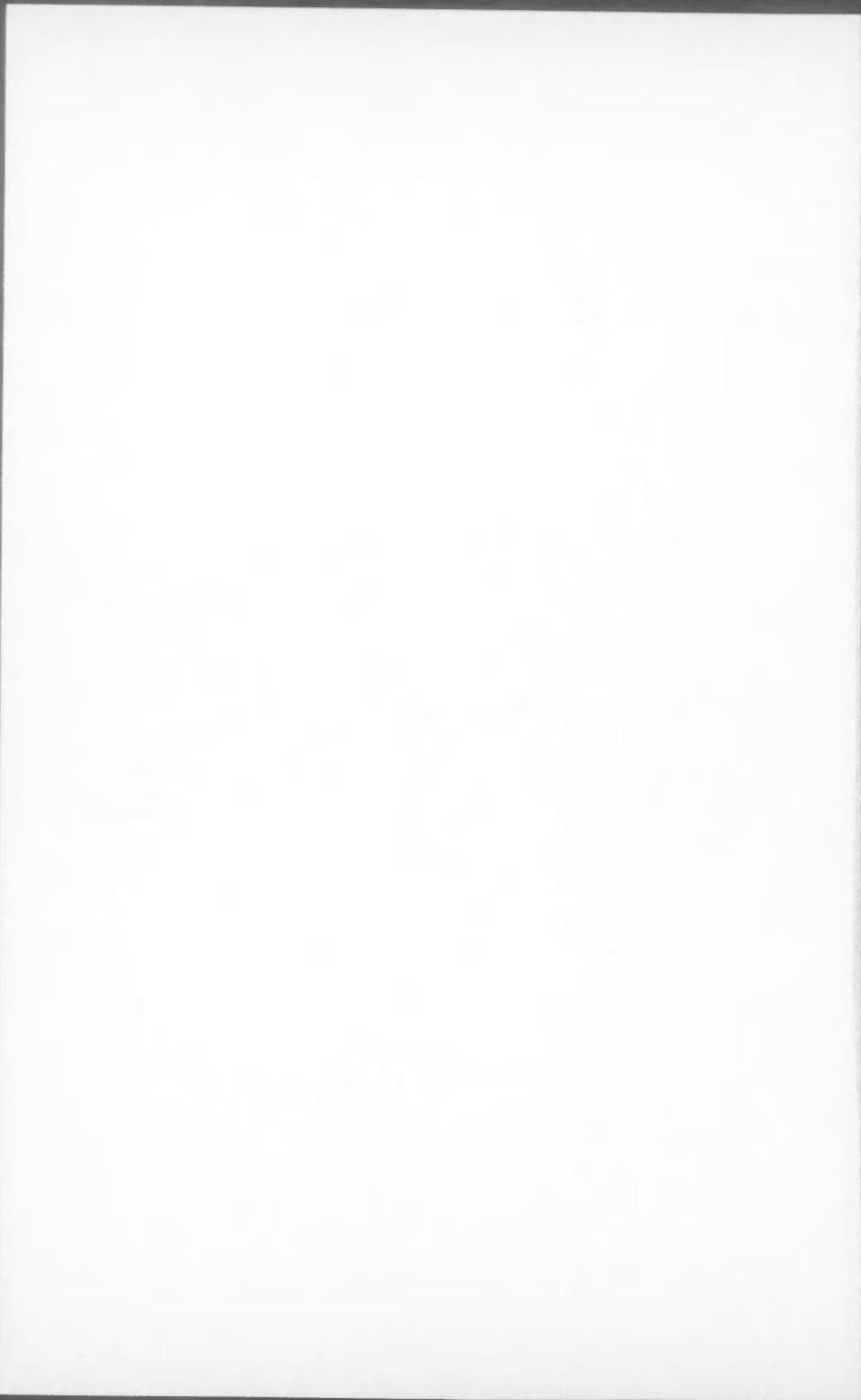
Holding:

The article identified by stock no. 39121 and as the "Case-Guard Polyfiber File Envelope" is classified in subheading 3926.10.0000, HTSUSA, the provision for "Other articles of plastics ***: Office or school supplies." The general column one duty rate is 5.3 percent ad valorem.

NY B84986, issued June 4, 1997, is hereby modified.

JOHN DURANT,
Director,
Commercial Rulings Division.





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